IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 244 of 2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 29th September, 2006

Heard Shri Rajkondalwar, learned counsel for the appellant.

2. By this appeal, the appellant takes exception to the Judgment and decree dated 1st October, 2005 passed by the 3rd Ad hoc Additional District Judge, Bhandara in Regular Civil Appeal No. 151/2003 dismissing the appeal filed by the plaintiffs against the Judgment and decree dated 28.8.2003 passed by the Civil Judge, Junior Division, Pauni in Regular Civil Suit No. 23/1999. The suit was filed seeking declaration that the plaintiffs have customary right of way to take their bullock-cart from the open space in city survey No. 3320. The trial Court upon appreciation of the evidence partly decreed the suit and declared that the plaintiffs have right of way of foot way to the extent of 4 ft. through city survey no. 3320 and consequently restrained the defendants from obstructing the plaintiffs to use the said way. The appeal preferred against the said Judgment has been dismissed by the lower appellate Court confirming the finding given by the

trial Court. The learned counsel appearing for the appellants/plaintiffs submitted that the finding given by both the courts while refusing the prayer of the plaintiffs for declaration of right of way to take their bullock-cart through city survey no. 3320 is perverse and, therefore, interference is called for in this appeal. Having considered the submissions made by the learned counsel for the appellants and having perused the impugned Judgments passed by both the courts below, I do not find any merit in the submission of Mr. Rajkondalwar. Both the courts below, in my opinion, have correctly appreciated the evidence led by the parties and have given findings thereof. In my opinion, the trial Court was justified in partly decreeing the suit and lower appellate Court was justified in dismissing the appeal filed by the plaintiffs. I find no perversity in the findings recorded by both the courts below. In any case, no substantial question of law is involved in the appeal and hence the appeal is rejected summarily.

Judge